

A. G. Contract No. KR04-0963TRN
ADOT ECS File No: JPA 04-039
Project No.: SR 89A
Section: MP 356.93 -357.27
TRACS NO.: H6697 01C
BUDGET SOURCE ITEM #: 73305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI COUNTY, ARIZONA

THIS AGREEMENT is entered into 22 October, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YAVAPAI COUNTY, ARIZONA, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State and the County desire to participate in the design and construction of turn lane improvements on State Route (SR) 89A at the Mingus Avenue/Cornville Road intersection (approximate MP 357.1), hereinafter referred to as the "Project". The Project will include but not be limited to, reconstruction of the existing left turn lanes on SR 89A, relocation of traffic loop detectors and extension of a median catch basin. The parties agree the County will be the lead agency for the design and construction of the Project, and the State will be responsible for the cost of the Project, estimated at \$114,000.00, which includes the design cost of \$7,000.00, the construction cost of \$104,000.00 and the Construction Engineering (testing) cost of \$3,000.00.

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated amounts referenced in this Agreement are subject to change and can change substantially; b) Both parties will perform their responsibilities consistent with this Agreement; c) Any change or modification to the Project will only occur subject to State's prior approval.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27172
Filed with the Secretary of State
Date Filed: 10/22/04

Janice K. Brewer
Secretary of State

By: Tim D. Graesswald

II. SCOPE OF WORK

1. The County will:

a. Upon completion of the Project improvements, provide the State with a recapitulation of the Project and invoice the State for the actual cost of the Project. The County shall not invoice the State prior to July 1, 2004.

b. Provide to State standards, design plans, specifications and other such documents and services required for construction of the Project. Provide the State design plans and other project related documents for review. Incorporate the State review comments.

c. With the written approval of the State, award a change order for the construction of the Project from the County's contractor currently constructing the Mingus Avenue Extension in the Cottonwood area. Administer the project construction and make all payments to the contractor. Confer with the State on any Project related contract modifications.

d. Request a cost for the Project improvements as a change order from the County's contractor currently constructing the Mingus Avenue Extension in the Cottonwood area. Provide the State the change order cost information for their review and approval.

e. Be responsible for any contractor claims for extra compensation due to the delay or whatever reason attributable to the County.

f. Apply for a State's right-of-way Encroachment Permit for all work within the State's right-of-way. The permit Application shall be requested and approved through the State's Flagstaff District Office.

2. The State will:

a. Upon completion of the Project and within 30 days after receipt of an invoice, remit to the County the actual cost of the Project, currently estimated at \$114,000.00.

b. Review the Project design documents and provide review comments as appropriate to the County.

c. Provide written approval for the County to proceed with awarding the change order for the Project.

d. Review the cost for the Project improvements provided as a change order from the County's contractor currently constructing the Mingus Avenue Extension in the Cottonwood area.

e. Be responsible for any contractor claims for extra compensation due to delay or whatever attributable to the State.

f. Grant the County a "Right-of-Way Encroachment Permit", through the Flagstaff District Office, to permit the County to perform all planned construction work for the Project.

g. Upon completion and acceptance of the Project by the County, be responsible to provide for, at its own cost and if properly budgeted for as an annual item, proper maintenance to the Project inside the State right-of-way.

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage or any other claims, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

2. This Agreement shall remain in force and effect until completion of said Project and payments; provided, however, that this Agreement, may be canceled at any time prior to the award of the Project construction contract, with thirty days written notice to the other party.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

7. **Non-Availability of Funds.** Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

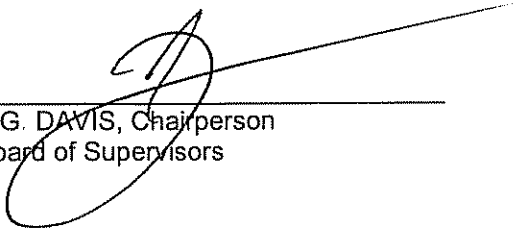
Yavapai County
Public Works Director
1100 Commerce Drive
Prescott, AZ 86305
(928)-771-3183

10. Pursuant to Arizona Revised Statutes, Section 11-952D, attached hereto is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

YAVAPAI COUNTY, ARIZONA

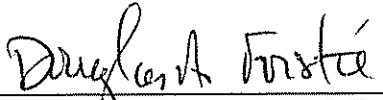
By


A.G. DAVIS, Chairperson
Board of Supervisors

STATE OF ARIZONA

Department of Transportation

By


DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

By


BEV STADDON
Clerk of the Board

APPROVAL OF THE YAVAPAI COUNTY ATTORNEY

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and YAVAPAI COUNTY and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 18th day of August, 2004.

A handwritten signature in black ink, appearing to be "M. Wolf", is written over a horizontal line.

County Attorney

**CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS**

YAVAPAI COUNTY)
) ss.
ARIZONA)

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: August 16, 2004.


The entry in the said minutes:

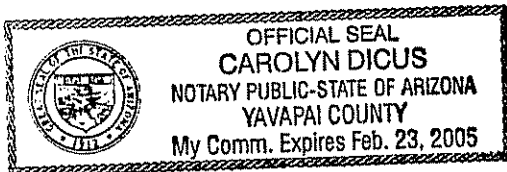
Consider approval of intergovernmental agreement JPA 04-039 with the State of Arizona for improvements to State Route 89A at the Mingus Avenue/Cornville Road intersection with all costs to be reimbursed by the State. Approved by unanimous vote Motion by Chairman Davis, second by Supervisor Brownlow. No comments from the public.

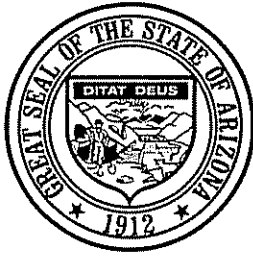

Bev Staddon, Clerk

SUBSCRIBED AND SWORN to before me September 7, 2004.

My Commission Expires:


Notary Public





**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-0963TRN (**JPA 04-039**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED October 15, 2004.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section